

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

WPA 5181 of 2024

Ranjit Pratihar

Vs.

The State of West Bengal & Ors.

With

WPA 5184 of 2024

Susabhan Singha Roy

Vs.

The State of West Bengal & Ors.

With

WPA 5188 of 2024

Shovan Maity

Vs.

The State of West Bengal & Ors.

With

WPA 5205 of 2024

Sudip Bag

Vs.

The State of West Bengal & Ors.

With

WPA 5215 of 2024**Krishna Sarkar****Vs.****The State of West Bengal & Ors.**

For the petitioner	:	Mr. Biswarup Biswas, Mr. Pradip Kumar Ghosh Advocates
For the State in WPA 5181 of 2024 & WPA 5205 of 2024	:	Mr. Swapan Kr. Datta Id. AGP., Mr. Dipankar Das Gupta.Advocates
For the State in WPA 5188 of 2024	:	Mr. Swapan Kr. Datta Id. AGP., Mr. Tapas Mandal.Advocates
For the State in WPA 5184 of 2024	:	Mr. Gourav Das, Mr. Hemanta Kumar Das.Advocates
For the State in WPA 5184 of 2024:	:	Mr. Pinaki Dhole, Ms. Tapati Samanta.Advocates
For the INC	:	Mr. Nilotpall Chatterjee.Advocate
For the WBNC	:	Mr. Abir SarkarAdvocate
For the Vocational Council	:	Mr. Suman DeyAdvocate

Heard lastly on	:	13.05.2025
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Judgment on	:	01.08.2025
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Jay Sengupta, J:

1. As the five writ petitions pertain to the same question of law, they had been taken up for hearing together. Among other things, the petitioner prayed for direction upon the respondents to complete the registration for the session 2023-2026 in place of 2022-2025 and to allow the petitioners to continue their GNM course forthwith.

2. Learned counsels representing the petitioners submitted as follows. The petitioner WPA 5181 of 2024, who was being a regular class mode student, passed in (X+2) Level Higher Secondary (Vocational) Examination in the year 2022, by obtaining more than 40% marks in aggregate and more than 40% marks in English, as conducted by the West Bengal State Council of Technical and Vocational Education and Skill Development, in the discipline of Engineering and Technology, with the subjects English, Bengali, Mathematics, Physics, Chemistry and other vocation papers. The said Vocational Council was a recognised Board/Council in terms of the publication of the West Bengal Joint Entrance Board. The petitioner submitted his application, in terms of the Notification vide No. HNG/3M-37-2020/1276 dated 22.09.2022, issued by the Director of health Services, West Bengal, before the respondent No. 4 for admission in GNM Nursing course for the session 2022-2025, having qualification as per i) the admission terms and conditions as published by the respondent No. 3, i.e., Indian Nursing Council, specially having science subject in (X+2) H.S. (Vocational) curriculum, ii) qualification in 4(i) of section 3.1 of the bulletin of WBJEEB as to “must pass ‘10+2’ examination from any recognised Board in regular class mode with at least 40% marks in aggregate and 40% marks in English.”

After verification of the application and also the qualification of the petitioner, the respondent No. 4 admitted the petitioner in GNM Nursing Course for the session 2022-2025 by accepting the fees for the course and thereafter, he had been regularly attending the said course. The respondent No. 2 i.e., West Bengal Nursing Council, however, did not complete the resignation of the petitioner without assigning any reason for the session 2022-2025. Be it mentioned that the respondent No. 2 registered students from Arts or Commerce streams, but the respondent No. 2 refused to complete the registration, when the petitioner passed H.S. (Vocational) course with science subjects in regular mode class system. The respondent No. 2 completed registration of several admitted students who were from Arts or Commerce streams, i.e., without having science subject in terms of the Notification vide No. HNG/3M-37-2020/1276 dated 22.09.2022, but the registration of the petitioner had not been given, hence, this writ petition. Furthermore, when the respondent No. 2, did not register the name of the petitioner, then with the same qualification of (X+2) H.S. (Vocational) in the discipline of Engineering and Technology, the Karnataka State Nursing Council admitted the said student by following the same admission norms of INC. In same set of circumstances, the Hon'ble Division Bench of this High Court held, by the order dated 14.12.2023, in MAT 2419 of 2023 held that: "The appellant has pursued her studies in regular vocational stream. However, the disciplined group is agriculture. Irrespective of the fact that the disciplined group is agriculture her subject combination disclosed at page 22 Annexure 'p-2' shows that she has studied bio-science, physics and

chemistry. The documents disclosed at page 51 shows that candidates with arts and commerce background have been included in the list of GNM 1st Year 2022-25. Students having academic background of bio-science, physics and chemistry would be on a better footing and suitable for the job than a student with Arts or Commerce background. Although, in the eligibility criteria it is stated that for regular candidates with Arts background science would be preferred, there is no material produced before us showing that the large number of candidates with arts as subject has science background. The list of candidates mentioned in the list at Page 51 shows large number of students in Arts and Commerce are allowed admission. Moreover the advertisement clearly states that students with science background should be preferred. The appellant was denied registration after she completed one year training course. Her eligibility was not denied at the threshold. It shall be presumed that at the time when she was allowed training, the authorities concerned must have considered the subjects she studied in the vocational course and found her suitable and eligible for training.” The respondent No. 2 before complying, the aforesaid order of the Hon’ble Division Bench issued the Memo No. 5917-5920/07/NC dated 15.12.2023 and by the said memo they gave a proposal to the student that if they agreed for registration for the session 2023-2026 in place of 2022-2025, he might appear personally. Furthermore, by referring the aforesaid order of the Hon’ble Division Bench, a Co-ordinate Bench of this Hon’ble High Court by an order dated 21.12.2023, allowed the writ petition therein vide WPA No. 24170 of 2023. Direction ought to be passed upon the respondent No. 2 to complete the

registration of the petitioner for the session 2023-2026 on following submissions. i) The petitioner passed H.S. (Vocational) in regular mode class system with science subjects of Mathematics, Physics and Chemistry, ii) As per INC norms of Admission Science was preferable, however, the respondent No. 2, gave registration to Arts and Commerce students, but registration of the petitioner had not been given, iii) The issue in the writ petition, was already decided by the Hon'ble Division Bench by the solemn order dated 14.12.2023, in MAT 2419 of 2023 and the said solemn order was duly complied by the respondent No. 2. i) In same set of qualification, by following the Norms of INC, the students were admitted by Karnataka State Nursing Council and the students completed their GNM course and got reciprocal registration from respondent No. 2, ii) By following the aforesaid order of the Hon'ble Division Bench a Co-ordinate Bench allowed the student passed in H. S. (Vocational) with science subjects to get registration, by an order dated 21.12.2023, in WPA No. 24170 of 2023. Be it mentioned that aforesaid case in presence of the counsels of the INC and WBNC said order was passed and following the said order no appeal was preferred, iii) By the doctrine of approbate and reprobate, the respondent No.2, could not deny the registration of the petitioner, after complying the order of the Hon'ble Division Bench with same facts, as passed in MAT 2419 of 2023 and after admission, pursuing the course by the petitioner. In this respect the petitioner relied on the following decisions: a) (2017) 16 SCC 680 National Insurance Company Limited Vs Pranay Sethi, b) (2001) 2 CHN 762 Ahamed Hossain Sk Vs State of West Bengal, c) CPW No. 18339 of 2018 (O and M) Rajesh Kumar

Vs State of Haryana and Ors., d) W.A. No. 1663 of 2020 Narayan Krishnan Vs The Union of India on 11.01.2021 by the High Court of Kerala, e) (2023) 10 SCR 427 Om Prakash Banerjee Vs State of West Bengal, f) Order dated 14.12.2023, in MAT 2419 of 2023 and MAT 2418 of 2023, g) Order dated 21.12.2023, in WPA No. 24170 of 2023. So far as in case of conflict between Benches, the provisions of the Rule 2 of Chapter VII of the Appellate Side Rules of the High Court at Calcutta, provided, "If the question arises in an appeal from an appellate decree or in an appeal under clause 15 of the Letters Patent or in a Reference or in any case heard by a Bench of two or more Judges, not being a Full Bench the Court referring the case shall state the point or points upon which they differ from the decision of a former Division Bench and shall refer the appeal, the reference or the case for the final decision of a Full Bench." In this respect the petitioner relied on the following decisions, i) (2009)4 CHN 146(FB) (ABL)(India) Pvt. Ltd. vs. Port of Kolkata), ii) (2018) 1 Cal LJ 628 (Sudhir Prakash vs. State of West Bengal). The petitioner took admission in GNM course in view of the notification dated 22.09.2022, issued by the Director of Health, West Bengal, having passed in Engineering and Technology course with science subjects, and similarly, with the same qualification of Engineering and Technology course with same science subjects, the Karnataka Nursing Council allowed the students by giving preference in science, to take admission and to complete the said GNM course and as such by the doctrine of non traverse, the defence of INC was not acceptable.

3. Learned counsel appearing on behalf of the petitioner in WPA No. 5184 of 2024 additionally submitted as follows. The petitioner passed Madhyamik Pariksha in the year 2020 from the West Bengal Board of Secondary Education. The petitioner took admission in (X+2) Level Higher Secondary (Vocational) Course in regular Mode for the session 2020-2022 in Engineering and Technology (Science) as conducted by the West Bengal State Council of Technical and Vocational Education and Skill Development in Panighata UDM High School. In H.S. (Vocational) subjects were Bengali, English, Chemistry, Mathematics and physic. The petitioner took admission on 28.09.2022 in GNM course as per notification vide No. HING/3M-37-2020/270 dated 22.09.2022, issued by the Director of Health Government of West Bengal, from Murshidabad Nursing Institute (Male) i.e., respondent no. 4 herein. The Registrar, West Bengal Nursing Council did not register the name of the petitioner. The Registrar, West Bengal Nursing Council issued memo dated 14.12.2023 to other candidate for registration for subsequent session in terms of the solemn order of this Hon'ble Court.

4. Learned counsel appearing on behalf of the petitioner in WPA No. 5188 of 2024 additionally submitted as follows. The petitioner passed Madhyamik Pariksha in the year 2020 from the West Bengal Board of Secondary Education. The petitioner took admission in (X+2) Level Higher Secondary (Vocational) Course in regular Mode for the session 2020-2022 in Engineering & Technology (Science) as conducted by the West Bengal State Council of Technical and Vocational Education and Skill Development in Kakdwip Birendra Vidyaniketan. In H.S. (Vocational) subjects were Bengali,

English, Chemistry, Mathematics and Physics. The petitioner passed in (X+2) Level Higher Secondary (Vocational) Course in regular Mode in the year 2022 and he was placed in Grade A category. The petitioner took admission on 25.09.2022 in GNM course as per notification vide No. HING/3M-37-2020/270 dated 22.09.2022, issued by the Director of Health Government of West Bengal, from Nalanda Nursing Institute (Male) i.e. respondent No. 4 herein. The registrar, West Bengal Nursing Council did not register the name of the petitioner. The Registrar, West Bengal Nursing Council issued memo dated 14.12.2023 to other candidate for registration for subsequent session in terms of the solemn order of this Hon'ble Court.

5. Learned counsel appearing on behalf of the petitioner in WPA No. 5205 of 2024 additionally submitted as follows. The petitioner passed Madhyamik Pariksha in the year 2020 from the West Bengal Board of Secondary Education. The petitioner took admission in (X+2) Level Higher Secondary (Vocational) Course in regular Mode for the session 2020-2022 in Agriculture (Science) as conducted by the West Bengal State Council of Technical and Vocational Education and Skill Development in Kakdwip Birendra Vidyaniketan. In H.S. (Vocational) subjects were Bengali, English, Mathematics and Physics and Biology. The petitioner passed in (X+2) Level Higher Secondary (Vocational) Course in regular Mode in the year 2022 and he was placed in Grade A category. The petitioner took admission on 01.11.2022 in GNM course as per notification vide No. HING/3M-37-2020/270 dated 22.09.2022, issued by the Director of Health Government of West Bengal, from Nalanda Nursing Institute (Male) i.e., respondent No. 4

herein. The registrar, West Bengal Nursing Council did not register the name of the petitioner. The Registrar, West Bengal Nursing Council issued memo dated 14.12.2023 to other candidate for registration for subsequent session in terms of the solemn order of this Hon'ble Court.

6. Learned counsel appearing on behalf of the petitioner in WPA No. 5215 of 2024 additionally submitted as follows. The petitioner passed Madhyamik Pariksha in the year 2020 from the West Bengal Board of Secondary Education. The petitioner took admission in (X+2) Level Higher Secondary (Vocational) Course in regular Mode for the session 2019-2021 in Agriculture as conducted by the West Bengal State Council of Technical and Vocational Education and Skill Development in Bengali High School. In H.S. (Vocational) subjects were Bengali, English, Chemistry, Biology and Physics. The petitioner passed in (X+2) Level Higher Secondary (Vocational) Course in regular Mode in the year 2021 and he was placed in Grade A category. The petitioner took admission on 28.10.2022 in GNM course as per notification vide No. HING/3M-37-2020/270 dated 22.09.2022, issued by the Director of Health Government of West Bengal, from Illambazar Nursing Institute (Male) i.e., respondent No. 4 herein. The registrar, West Bengal Nursing Council did not register the name of the petitioner. The Registrar, West Bengal Nursing Council issued memo dated 14.12.2023 to other candidate for registration for subsequent session in terms of the solemn order of this Hon'ble Court.

7. Learned counsel appearing on behalf of the Indian Nursing Council submitted as follows. As per eligibility criteria and or Admission terms and

conditions for pursuing GNM course as set by Indian Nursing Council, the student/candidate must possess, 10+2 with English having 40% of marks in Vocational stream – Health Care Science from a recognised CBSE Board/Centre. The aforesaid eligibility criteria was followed by the respective Nursing Councils of different States and State of West Bengal had emphasised on strict adherence to the said eligibility criteria. The admission to GNM Course in the State of West Bengal was done through an entrance examination, conducted by West Bengal Joint Entrance Board in the State of West Bengal, the impugned session was based on a common entrance test for GNM – 2022, the eligibility criteria and other terms and condition, some of the said terms are enumerated below. A) Clause 3.2 set forth the eligibility criteria for admission to GNM course in three categories as follows. i) Must pass ‘10+2’ examination from recognised board in regular class mode with at least 40% marks in aggregate and 40% marks in aggregate and 40% marks on English, ii) Must be a registered ANM (with pass marks) or iii) Must pass ‘10+2’ examination from any recognised Board in Vocational Stream – Health Care Science with English and with at least 40% marks in aggregate. B) Clause 12 appearing for the examination and even obtaining a rank do not guarantee admission. Rules as will be applicable at the time counselling will determine allotment and admission criteria. Candidate must make themselves aware of the latest rules and criteria of admission into different University/Institution and other specific criteria issued by Government/Regulatory bodies from time to time. Board would not be responsible in any way, if any candidate failed to aware himself/herself

regularly on any updated information. C) Clause 3.3 also made it abundantly clear that admission or even holding of rank by itself did not confer any right to the candidate if he failed to comply with the eligibility/required criteria. D) Clause 19 c enumerated that all verification were done by the allotted institute during counselling. Hence, candidates could not assume that the personal information shown in the confirmation page, admit card, rank card etc were accepted or approved by the Board. There was no challenge to the eligibility criteria as set by INC further no challenge to admission criteria as set forth by the West Bengal Joint Entrance Board. Admittedly, the petitioner had passed 10+2 from Vocational Course conducted by West Bengal State Council of Technical and Vocational Education and Skill Development in Discipline Engineering and Technology vide marks sheet dated 15.06.2022. Perusal of the mark sheet would show that the petitioner did not possess any one of the four required qualifications. In spite of knowledge of not being eligible in terms of the aforesaid eligibility criteria the petitioner allegedly had got himself to a private college. At the time of checking of antecedents it was discovered that the petitioner did not qualify the prescriptions of the eligibility criteria and the West Bengal Nursing Council had denied to register the petitioner for the GNM course. The Indian Nursing Council Act 1947 was a overreaching legislation in matters relating to Nursing education, it set uniform standards of training for nurses, the principal responsibility of the Council was to maintain Uniform standards of education for which it issued instructions and guidelines prescribing the course curriculum, infrastructure requirements etc. Unless the prescription of eligibility criteria and guidelines

and or syllabus as set by Indian Nursing Council were strictly adhered to the uniform standard of a technical/professional nurse could not be maintained on a Pan India basis, and the consequences would be irreparable loss to the society at large. In the instant case the candidate did not fulfil the eligibility criteria as per the Indian Nursing Council which was duly published by the West Bengal Joint Entrance Board in its information bulletin, the candidate being well aware of his ineligibility to pursue the GNM course had no right to continue with the same since he did not fulfil the eligibility criteria, the institute for its personal gain had sought to compromise with the eligibility criteria which did not derive any right in favour of the candidate. The eligibility criteria for admission to GNM course as set by the Indian Nursing Council was strictly adhered to by the State-Council any relaxation or deviation thereof will result in discrimination to such student who had not participated with the bonafide belief that they do not fulfil the eligibility criteria and the same was not permissible in accordance with law. i) SLP (Civil) No. 8442 of 2011, the Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs G.Hemlata and ors. when eligibility criteria was prescribed for the qualifying examination for admission to any course it must be strictly adhered to any dilution or tampering with it would work injustice to other candidates. ii) (2009) 11 SCC 726, All India Council for Technical Education Vs Surinder Kumar Dhawan and Ors. The role of statutory expert bodies on education and role of Courts were well defined by a simple rule, if it was a question of educational policy or an issue involving academic matters the Courts keep their hands off, Courts were neither equipped nor

have any academic or technical background to substitute themselves in place of statutory/professional/technical bodies. (2010) 8 SCC 372 onwards. Court should be extremely reluctant to substitute its own views as to what was wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions. Division Bench Judgement relied upon by the petitioner in MAT No. 2419 of 2023 Tanuja Panda Vs. The State of West Bengal and Other was not a judgement in rem, rather was a judgement sub silentio and not binding precedent, further distinguishable on facts in the present case the petitioner did not possess the subject combination of bio-science, physics and chemistry. As per (2001) 3 SCC 537, precedent sub silentio and without argument were of no moment, that which had escaped in the judgement was not the ratio decidendi. A decision which was not express and not founded on reasons nor it proceeded on consideration of issue could not be deemed to be a law declared to have binding effect. The petitioner did not possess the eligibility criteria as per the Admission terms and condition by the West Bengal Joint Entrance Board which was set as per the guidelines of the Statutory/regulatory body Indian Nursing Council. Any dilution of the prescribed eligibility criteria by the Hon'ble Court would amount to injustice to other candidates, Indian Nursing Council is the expert body having after due consideration had framed the terms and condition for admission which cannot be interfered under Article 226 of the Constitution of India, especially when the same was not even challenged in the present proceeding. The

Council had deemed it fit and proper to draw a line of distinction between a regular and vocational course and set the eligibility criteria that for students who have undergone 10+2 under a vocational course only students who have pursued the Discipline Health Care Science would be eligible to undergo the GNM course the same could not be diluted in Judicial review. While the reason of such a distinction could not be put before this Hon'ble Court in black and white the Hon'ble Court would appreciate that even the University of Calcutta draws a distinction between a regular course and a vocational course. The Hon'ble Division Bench had disposed of the matter being MAT 2419 of 2023 at the very first occasion, without calling for affidavits, neither State nor the West Bengal Nursing Council were present resultantly the following documents were not placed before the Hon'ble Division Bench. The eligibility criteria as per Indian Nursing Council was followed by the respective Nursing Councils of different States and State of West Bengal had emphasised on strict adherence to the said eligibility criteria. The admission terms and conditions, several clauses as published in the information bulleting published by the West Bengal Joint Entrance Board. Similar provision was there in the admission criteria of University of Calcutta, restricting the students of vocational courses to get admission only to BA (General) Humanities only. The Division Bench did not consider the settled proposition of law that relaxing of eligibility criteria would tantamount to tampering with it and work as injustice on other students, further it did not deal the legal position which was reaffirmed in the matter of Basavaiah (Dr) Vs. Dr. H.L. Ramesh and others reported in (2010) 8 SCC 372. Constitution

Bench Judgement reported in 1963 SCC Online 15, normally the courts should be slow to interfere with the opinions expressed by experts, it would be normally be wise and safe for the courts to leave the decisions of academic matters to experts who were more familiar with the problems they face than the Courts generally could be. Rules of High Court at Calcutta relating to applications under Article 226 of the Constitution of India, Rule 26 provided - "A Judge, for the reason recorded at the hearing or at any subsequent stage of the proceeding may make it returnable before a Division Bench or may while hearing the Rule, refer the same to the Division Bench for hearing."

1965 SCC Online SC 73, Lala Shri Bhagwan and another Vs Shri Ram Chand and another held that "it would have been appropriate if the learned Single Judge had not taken upon himself to consider the question as to whether the earlier decisions of the Division Benches of the High Court needed to be reconsidered and revised. It is plain that the said decisions had not been directly or even by necessary implication overruled by any decision of this Court, indeed, the judgment delivered by the learned Single Judge shows that he was persuaded to re-examine the matter himself and in fact he had substantially recorded his conclusion that the earlier decisions were erroneous even before his attention was drawn to the decision of this Court in Laxman Purshottam Pimputkar case. It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, needed to be reconsidered, he should not embark upon that enquiry

sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety". In WP No 5291 (W) of 2014, Tapan Kumar Mandol vs State of West Bengal, a coordinate Bench in a matter referred the matter before the Hon'ble Chief Justice to place the issue before the Division Bench. The stand of the petitioner in the exception to report filed by respondent No. 3, inter alia, that Karnataka State had allowed students with similar background to undergo the GNM course was of no help as i) the criteria of admission to GNM course by Karnataka council was not before this Hon'ble Court and ii) morefully there could not be any negative equity. The order of the Hon'ble Division Bench was sub silentio and not binding precedent as there was without reference to crucial words of the rule, without any citation of authority, not founded on reasons, and without conscious consideration of an issue. Reliance was placed on (2001) 3 SCC 537. The Hon'ble Division Bench had given no conscious consideration to the difference between a regular and vocational course.

8. Learned counsel for the West Bengal Nursing Council submitted as follows. The Indian Nursing Council (hereinafter referred to as 'INC') was a statutory body established as per the Indian Nursing Council Act, 1947 and its main function and objective was to establish uniform standards of nursing education for nursing personnel and to prescribe the syllabus and regulation for various categories of nursing personnel with the aim and

object to strive to achieve the uniform standards of nursing education. INC had revised the syllabus and regulation for General Nursing and Midwifery (in short GNM) training programme in the year 2015 and the same was still in force. The syllabus and Regulations as prescribed by the Indian Nursing Council was published in the year 2015 under its different heading also included the heading "Admission Terms and Conditions". The said "Admission Terms and Conditions" was enumerated. The said aim and object as stated herein above, i.e., to establish uniform standards of nursing education for nursing personnel the WBNC followed the same and equal Admission Terms and Conditions. Actually, the writ petitioner was in the group of Vocational Computer Maintenance and Networking (ETCM) Course under Engineering and Technology discipline and not studied Vocational Home Care Science. Naturally, the writ petitioner had not the required minimum educational qualification and also lack of minimum educational eligibility criteria to get admission in GNM course and to proceed with a course in GNM. That the WBNC had neither any right nor any power to ignore the directives of Indian Nursing Council (INC). Therefore, considering all aspects of getting admission and going to the academic background and qualification of the writ petitioner, the WBNC had no other alternative but to reject the candidature and/or registration of the writ petitioner. In the writ application the petitioner very much relied upon the order dated 14.12.2023 in MAT No. 2419 of 2023 with IA No. CAN 1 of 2023. The Hon'ble Division Bench passed an order where none appeared on behalf of the WBNC because no copy of the application whatsoever was served upon the WBNC. It was

true that some candidates belonging to Arts and Commerce background were included in the list of GNM, but they were entitled only for the reason that they did not belong to vocational course and for that reason they clearly come and also included within the parameter of minimum educational eligibility criteria framed by the INC as stated hereinabove in paragraph no. 2. The petitioner herein belonged to vocational course background who have studied Engineering and Technology and not studied Vocational Home Care Science. Certainly, he was not a fit candidate as per guidelines and principles of the council to study a course in GNM. It was pertinent to mention here that candidates in 10+2 under the vocational course who have studied Vocational Home Care Science were only eligible to study GNM course. The candidates in 10+2 under the vocational course who have studied any other subject save and except Vocational Home Care Science were not eligible and a fit candidate to study GNM course as per the admission criteria of the INC to study GNM. The Hon'ble Division Bench has passed an order possibly in an exceptional circumstance where no one appeared on behalf of the WBNC to demonstrate and explain the exact state of affairs explaining that the candidates in Arts and Commerce background were allowed only for the reason that they were not candidates studied vocational course. The said order was an order 'in personam' for the reasons as stated hereinabove and not an order 'in rem' and for that reason should never be treated as a precedent. The judgement passed by the Hon'ble Supreme Court in Satish Kumar Gupta and others vs. State of Haryana and others (2017) 4 SCC 760, "C. – Precedents – Generally – Order passed by

court without any consideration on principles of law, cannot be treated as precedent – Constitution of India, Art, 141.” The minimum educational qualification eligibility for admission in GNM course as per the INC Guidelines was as under. i) > 10+2 with English having 40% of marks in Vocational Stream-Health Care Science from a recognised CBSE Board/Centre, ii) The INC issued another notification dated 18.05.2022 directing all schools/colleges of Nursing to ensure that the minimum admission requirement was to be fulfilled in each case of admission, iii) Another notification was issued by the Director, Health Services, West Bengal stipulated that “For admission to B.Sc. Nursing and GNM course INC criteria for admission must be followed.” iv) The INC was an expert body which has stipulated the admission criteria for GNM course. The Director of Health Services, West Bengal notified that the admission criteria on INC must be followed. The State Council of Technical and Vocational Education and Skill Development issued Certificate in favour of the petitioner certifying that the petitioner has passed 10+2 Level Higher Secondary (Vocational) Examination, 2022 in Engineering and Technical discipline. The subjects taught would appear from page 28 of the writ petition which were considered for awarding the certificate under Engineering and Technology discipline in favour of the petitioner. It was evident that INC stipulated the admission criteria which is followed by the Director of Health Services, West Bengal and the West Bengal Nursing Council in the matter of admission of GNM students like the petitioner. For the discipline chosen by the petitioner, the Engineering and Technology, the State Council for Vocational Education had

prescribed the subjects taught also as an expert body. In the case of the Post Graduate Institute and Ors. Vs. Dr. J.B. Dilawari and Ors. reported at (1988) Suppl SCC 355, it was held that though the Court is the expert of experts, matters involving expertise should be left to be handled by the expert bodies. Job requirements and prescription of qualifications be determined by the Academies, Committees and the other authorities under the Acts, Rules and/or Regulations. In the case of V.K. Sood -vs- Secretary, Civil Aviation & Ors (1993) Suppl (3) SCC 9 (7) it has been held, inter-alia, that it was for the expert body and for the Rule making authority or for the Legislature to regulate the method of recruitment, prescribe qualifications etc. This was not the province of this Court to trench into and prescribe qualifications in particular when the matter was of technical nature. The second paragraph of the judgement dated 14.12.2023 recorded the argument that the Court cannot re-write the terms of the advertisement. No ratio, however, had been decided in that regard. The Hon'ble Division Bench held that the students having academic background of Bio-Science, Physics and Chemistry would be on better footing and suitable for a job than that of a student with Arts and Commerce background. The issues fell for consideration by the expert bodies. In the case of Satish Kumar Gupta & Ors vs. State of Haryana & Ors reported in (2017)4 SCC 760 (17) it had been held as under: "17. We may now refer to an order of this Court dated 15.7.2004 which has been relied upon in the impugned judgment in paragraph 31. There is no consideration of the principle of law and thus the said order without there being contest on the principle of law could not be treated as a precedent for deciding the legal

issue at hand". The Division Bench Judgement was a judgment in personam and not in rem. Further, it did not consider or followed the principles of law laid down in V.K. Sood -vs- Secretary, Civil Aviation & Ors (supra) and Satish Kumar Gupta & Ors vs. State of Haryana & Ors (supra). Accordingly, this judgement dated 14.12.023 was not a precedent for adjudication of the instant case. It was submitted that the writ petition was devoid of any merit and might be dismissed by this Hon'ble Court.

9. I heard the learned counsels for the parties, perused the writ petitions, the affidavits and the written notes of submissions.

10. The respondents have strongly advocated the propositions that the decision rendered by a Division Bench of this Court in Tanuja Panda (supra) on 14.12.2023 was sub silentio as it did not consider the distinction between a regular course and a vocational course and secondly, treated the petitioners' science course of a vocational stream like science course of a regular stream. Their further contention is that as such, the ratio laid down therein need not be followed and at the most, can be referred to a Larger Bench or placed before the Hon'ble Chief Justice for appropriate assignment or formation of Bench to hear such matter. Therefore, at the very outset, it has to be seen whether the argument as alleged had gone sub silentio in the decision in Tanuja Panda (supra).

11. In the said judgement, the Division Bench first recorded that the appellant/petitioner had passed Higher Secondary Examination in the vocational stream in agriculture and had subjects, like bio-science, physics

and chemistry. It had recorded the submissions for the appellant that inspite of having science background, she was not considered and the admit card was not issued in her favour although candidates with Arts and Commerce background had been favoured and allowed to participate in the examination. The Division Bench had also recorded the opposition of the Indian Nursing Council that the candidate had obtained vocational courses in agriculture and could not be treated with candidates having science background. Therefore, the emphasis of the Council was clearly on vocational courses. Thereafter, the Division Bench went on to record that the appellant had pursued her studies in regular vocational stream and that students having academic background of bio-science, physics and chemistry would be on a better footing and suitable for the job than a student with Arts and Commerce background. It also recorded that the advertisement in question clearly said that the students in science background should be preferred.

12. The same view was taken by the Division Bench in *Suprana Maity* (MAT 2419 of 2023).

13. From a plain reading of the judgement passed by the Division Bench in *Tanuja Panda* (supra), it is abundantly clear that the Court was conscious of the fact that the candidate had passed in a vocational stream and inspite of the same, decided to allow such a candidate to participate in the process and this was decided on merits after hearing of the parties.

14. It, thus, appears that the Division Bench preferred the science stream over the others, be it for the regular course or the regular vocational course. In this the Division Bench relied on the advertisement, which at another place stated that the students with science background should be preferred. The Division Bench construed this condition as applicable regardless of whether the course was regular or vocational or otherwise.

15. Therefore, it cannot be said that the issue in question about the distinction between the regular course and the vocational course went sub silentio before the Court.

16. The Division Bench had also taken into consideration the argument that the Court could not rewrite the terms of advertisement. The Division Bench was conscious that it was not re-writing the terms, but was only interpreting it in a particular way.

17. It is trite law that if a judgement of a Division Bench of this Court is to be challenged, the same has to be done by filing an appeal.

18. Keeping in view the principles of judicial discipline and hierarchy of Courts, this Court, therefore, finds the decision of the Division Bench in Tanuja Panda (*supra*) binding on it.

19. Another important inference in the decision of the Division Bench was that a candidate could not be denied registration after she had completed the training course, especially when her eligibility was not denied at the threshold.

20. Besides, even the present facts are similar to the ones dealt with by the Division Bench in Tanuja Panda (supra) and Suprana Maity (supra), especially when touching upon materials points. It is also quite relevant that another Single Bench of this Court followed the ratio laid down by the Division Bench in the said decisions and I do not find any reason to take a different view.

21. In view of the above discussions including the facts of the instant cases as delineated earlier and in the interest of justice, the corresponding respondents, particularly the Registrar, West Bengal Nursing Council is directed to allow the petitioners to get registered for the course in question in terms of the order passed by the Division Bench in Tanuja Panda (supra) for the next available session/s upon compliance of necessary formalities.

22. With these observations and directions, the writ petition is disposed of.

23. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)